

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 733 (First Edition)

SHORT TITLE: Regulate Comm. Breeding/Dogs.

SPONSOR(S): Representatives Dickson, Allen, McElraft, and Sager

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>
REVENUES					
Ag & Cons. Services	\$ 4,640	\$ 5,690	\$ 8,018	\$ 10,345	\$ 12,173
Fees & Forfeitures	\$ 3,310	\$ 3,310	\$ 2,483	\$ 1,655	\$ 828
EXPENDITURES					
Ag & Cons. Services	\$ 284,313	\$ 461,772	\$ 479,949	\$ 431,609	\$ 444,804
Fees & Forfeitures	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Correction			Indeterminate fiscal impact		
Judicial			Indeterminate fiscal impact		
POSITIONS (cumulative):					
Ag & Cons. Services	6	6	6	6	6
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
Department of Agriculture and Consumer Services					
Department of Public Instruction					
Department of Correction					
Judicial Branch					
EFFECTIVE DATE: December 1, 2009					

BILL SUMMARY:

H.B. 733 amends G.S. 19A-24. The bill requires the Board of Agriculture to establish standards for the care of animals at commercial breeding operations, including provisions for adequate daily exercise, adequate veterinary care, appropriate housing and record keeping. It also requires commercial dog breeders to obtain a commercial breeders license before commencing operations; failure to obtain a license is a Class 2 misdemeanor. The bill gives the Department of Agriculture and Consumer Services (DACs), or local animal control, the right to inspect commercial breeding operations.

H.B. 733 prohibits commercial breeders from owning or having custody of more than 20 female dogs over the age of four months at any one time and breeding females less than 18 months or more than 8 years old. It requires breeders to obtain an annual health certificate for female dogs that will be bred and to provide veterinary care to all dogs and their offspring. The bill establishes penalties (fines of at least \$50 per animal up to a total of \$1,000, Class 3 misdemeanor) for failure of a commercial breeder to adequately house, exercise, feed, water, provide adequate veterinary care or otherwise meet the standards of care for their animals.

H.B. 733 is substantially the same as S.B. 460. There are two major differences. First, H.B. 733 exempts kennels and establishments operated primarily for the purpose of boarding or training of hunting, sporting, herding, or guide dogs from the definition of commercial breeding operation. Second, H.B. 733 adds the provision that commercial dog breeders may not own or have custody of more than 20 female dogs over the age of four months at any one time.

BACKGROUND

In 1966, the U.S. Congress passed the Animal Welfare Act (USAWA), which outlines specific minimum standards of care for dogs (and other animals) bred for commercial resale. Under the USAWA, certain large-scale commercial breeders are required to be licensed and regularly inspected by the United States Department of Agriculture. Only “wholesale” facilities that breed animals for resale – for example, to pet stores – are subject to the USAWA; operations that sell directly to the public are not required to adhere to USAWA or any federal humane care standards.

H.B. 733 requires the Department of Agriculture and Consumer Services (DACS) to develop standards of care, license, and inspect all commercial dog breeders who maintain 15 or more adult female dogs, in a 12-month period, for the primary purpose of the sale of their puppies; as noted above, this excludes kennels or other establishments operated primarily for the purpose of boarding or training hunting, sporting, herding, or guide dogs. DACS already has standards of care in place for animal shelters, boarding kennels, pet shops, and public auctions. In addition, DACS licenses, or issues certificates of registration, and inspects these facilities.

As with S.B. 460, DACS’ Animal Welfare Section (AWS) estimates that there are at least 200 commercial breeders operating in North Carolina. The estimate provided in the fiscal note for S.B. 460 also excluded the boarding and training facilities specifically exempted in H.B. 733 as their primary purpose is not the sale of offspring. Of these 200 commercial breeders, 79 are known to have more than 15 female dogs and, therefore, fall within definition of Commercial Breeder as defined in H.B. 733. AWS stresses the fact that this is most likely a very conservative estimate of the actual number of commercial dog breeders; because the industry is unregulated, it is essentially a hidden industry, making an accurate estimate of the number of breeders, at best, an educated guess.

While regulation may cause some commercial breeders to shut down, AWS expects the number of known breeders to grow to 240 within five years. This growth is due to three main factors:

- Increased attention to the industry by DACS will uncover additional breeders;
- Inspected facilities will inform on their non-regulated competitors; and

- Increased public awareness of commercial dog breeding standards will increase the number of public complaints about commercial breeding facilities.

H.B. 733 also mandates that commercial breeders do not own or have custody of more than 20 female dogs over the age of four months at any one time. While AWS does not have an accurate estimate of the number of facilities with more than 20 female breeding dogs, they estimate that there are at least 60 such commercial breeding operations within the state. AWS stresses that the counts of commercial breeding facilities are educated guesses; the true number and size of commercial breeding facilities in North Carolina is unknown and estimates are being updated continually. During the past two weeks, AWS inspectors found two commercial breeding facilities with approximately 450 animals each; these facilities were previously unknown. Such large discoveries in such a short time frame illustrate the potential magnitude of hidden facilities.

ASSUMPTIONS AND METHODOLOGY:

Developing Standards

Housing situations (long-term & short-term) at commercial dog breeding operations are sufficiently different from those in currently regulated facilities that new rules would have to be developed to accommodate the different goals of operation. Many other states and the federal government have rules that could serve as a model for North Carolina. Because H.B. 733 only includes dogs, developing the rules should be less involved than if other species were included.

It is anticipated that the development of these rules will be controversial. The American Kennel Club and other organizations that promote ethical breeding are expected to object. Assuming little to no controversy, new regulation could be implemented in approximately six months. However, because of the expected controversy, it could take a year or more to pass the rules. As an example, development of the euthanasia rules began in June, 2006, but the rules have yet to be adopted.

A recent meeting on the new euthanasia rules conducted by animal control personnel attracted 15 people to argue against oversight of commercial breeding operations; the meeting agenda did not include discussion on this topic and no meeting advertisements indicated that the animal control personnel would discuss commercial dog breeding regulation. Nevertheless, the fact that opponents of this regulation come to protest at unrelated meetings is one example of the level of controversy that might be expect in developing these regulations.

Expected Revenue

There are two sources of revenue under H.B.733 – license revenue and fines. All commercial breeding facilities would be required to purchase a license to operate. Failure to obtain a license is a Class 2 misdemeanor, and continuing to operate without a license can result in the immediate seizure and impoundment of the animals upon conviction. The license fee is \$50. Assuming all commercial breeders purchase a license, DACS would receive \$3,950 in revenue in the first year. This revenue is expected to increase to \$12,000 per year by FY 2013-14 due to the expected increase in the number of regulated facilities.

Fines & Forfeitures

H.B. 733 allows AWS to assess penalties on breeders who fail to provide adequate care for their animals. The failure to properly care for the animals (house, exercise, feed, water, provide veterinary care, etc) is a Class 3 misdemeanor; for this offense, the breeder could also be subject to a fine of not less than \$50 per animal, up to \$1,000. Pursuant to Article IX, Section 7(b) of the Constitution, the proceeds of all civil penalties that are collected due to S.B. 460 will be deposited in the Civil Penalty and Forfeiture Fund. The proceeds may be diminished only by the actual costs of collection. The DACS' administrative withholding rate is 17.25%.

AWS does not expect significant revenue from fines. Their policy is to work with non-compliant facilities to bring them into compliance with the regulation. AWS can escalate their requests for cooperation by issuing a "Cease and Desist" order and, ultimately, taking over the facility. Businesses recognize that failure to comply with the regulations puts their livelihood at risk and that there are substantial legal costs associated with a challenge to AWS regulation. Thus, AWS has found that their cooperative approach has been effective in bringing organizations into compliance and keeping businesses open.

AWS provided historical information on fines collected from 1996 until 2004. Over this period, AWS collected eight fines, for revenue of \$4,100, or less than \$500 per year. However, given the large number of facilities that are outside of the size limitations for commercial breeding operations set by H.B. 733 and the fact that many facilities are expected to be non-compliant with the new regulations, AWS expects that fine revenue will be significantly higher than in the past. Takeovers will typically result in fines to the operators of no less than \$50 per animal up to \$1,000 per breeder. For the purpose of this fiscal note, annual fine revenue of \$4,000 has been assumed for the first two years, reflecting AWS' expectation that at least four commercial breeding facilities will be taken over or fined for non-compliance each year. AWS expects takeovers and non-compliance to decrease as commercial breeders adjust to the regulations or move out of state. Therefore, fine revenue has been reduced starting in FY 2011-12.

Table 1: Expected Revenue

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
Licenses					
Registered Breeders	79	100	150	200	240
License Revenue	\$ 3,950	\$ 5,000	\$ 7,500	\$ 10,000	\$ 12,000
Takeovers/ Fines Levied	4	4	3	2	1
Fines	\$ 4,000	\$ 4,000	\$ 3,000	\$ 2,000	\$ 1,000
Total Revenue	\$ 7,950	\$ 9,000	\$ 10,500	\$ 12,000	\$ 13,000

Per G.S. 115C-457.2, the clear proceeds of the fine revenue will go to the Civil Penalty and Forfeiture Fund; DACS will retain its cost of collection based on its 17.25% administrative withholding rate. Table 2 shows the breakdown of the fine by recipient.

Table 2: Allocation of Fine Revenue

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
Fines to DACS	\$ 690	\$ 690	\$ 518	\$ 345	\$ 173
Fines to Civil Penalty & Forfeiture Fund	\$ 3,310	\$ 3,310	\$ 2,482	\$ 1,655	\$ 837
Total Fine Revenue	\$ 4,000	\$ 4,000	\$ 3,000	\$ 2,000	\$ 1,000

Expected Costs

Department of Agriculture and Consumer Services

H.B. 733 will require AWS to inspect commercial dog breeders. It is expected that the number of inspections needed for each commercial breeding facility will exceed the number needed at currently licensed facilities. Currently, facilities that are required to be licensed under North Carolina's Animal Welfare Act (NCAWA) have a 30% failure rate, despite being subject to inspection for several years. Historically, when taken under NCAWA regulations, facilities have a near 100% inspection failure rate for the first several years. For instance, in 2005, public animal shelters were required to meet the standards of the NCAWA; few passed initial inspection and, as a result, were inspected up to five times per year.

AWS currently employs five Animal Health Technicians who inspect over 640 facilities across the State. Given the 30% failure rate, these five inspectors performed more than 1,000 inspections and travelled over 120,000 miles in 2008. Thus, facilities are inspected, on average, 1.6 times per year and each inspector is responsible for over 200 inspections every year. Regulating the commercial dog breeding industry will require three additional inspectors for at least the first five years. At first glance, if each facility only required one inspection, it appears that these new inspectors will only be inspecting 29 facilities each in the first year, increasing to 80 each in the fifth year. However, AWS assumes that each facility will be inspected at least three times and need additional support from inspectors to understand and comply with the new regulations.

Inspectors will also be needed to identify "hidden" commercial dog breeding facilities and investigate the large number of calls that are expected following the implementation of the new regulations. Finally, AWS expects to takeover at least one facility per year for the first several years. Takeovers are staff intensive; one recent takeover required over 750 hours of a field inspectors time. AWS anticipates that the number of additional inspectors could be reduced as facilities come into compliance or close.

AWS will also require an administrative assistant, an attorney, and a paralegal to handle the increased administrative and legal work associated with the new regulations. AWS expects a number of legal challenges from the newly regulated operations; the current attorney is at capacity and will not be able to handle the additional work. Table 3 provides a breakdown of staff duties.

Table 3: New Staff Duties, Hours

Duty	Hours	% of Time
Inspector		
Conducting Inspections and Compliance Activities	1,710	95%
Investigating Complaints	72	4%
Searching for Unknown Facilities	18	1%
Administrative Assistant		
Routing Complaints & Handling Information Requests	1,170	65%
Coordinating Inspections & Posting Inspections Online	540	30%
Handling and Documenting Fees	90	5%
Attorney		
Providing Legal Advice to AWS	1,080	60%
Drafting Legal Correspondence Requiring Adherence to AWA	540	30%
Representing AWS in Court	180	10%
Paralegal		
Researching Court Opinions/ Decision	1,080	60%
Drafting Discovery, Correspondence Documents	360	20%
Managing Documents	270	15%
Assisting Attorneys in Trial Preparation	90	5%

Table 4 provides a detailed account of the costs associated with the new staff.

Table 4: Expected Salary & Benefit Costs, FY 2009-10 Dollars

	Field Inspector	Attorney I	Paralegal I	Office Assistant	Total
# of Positions	3	1	1	1	
Salary Grade	63	79	67	63	
Base Pay	\$ 29,502	\$ 74,323	\$ 43,490	\$ 29,502	
<i>Total Base Pay</i>	<i>\$ 88,506</i>	<i>\$ 74,323</i>	<i>\$ 43,490</i>	<i>\$ 29,502</i>	<i>\$ 235,821</i>
Hospitalization	\$ 12,471	\$ 4,157	\$ 4,157	\$ 4,157	\$ 24,942
Social Security	\$ 6,771	\$ 5,686	\$ 3,327	\$ 2,257	\$ 18,040
Retirement	\$ 7,204	\$ 6,050	\$ 3,540	\$ 2,401	\$ 19,196
<i>Fringe Benefits</i>	<i>\$ 26,446</i>	<i>\$ 15,893</i>	<i>\$ 11,024</i>	<i>\$ 8,815</i>	<i>\$ 62,178</i>
Total Pay	\$ 114,952	\$ 90,216	\$ 54,514	\$ 38,317	\$ 297,999

Operating expenses associated with the new inspection duties would total \$27,313 in the six months of FY 2009-10 that the new regulation would be in place. This figure includes on-going operating expenses of \$23,213 as well as \$7,100 in start-up expenses for computers and inspection equipment. The FY 2010-11 operating expenses are expected to be \$41,022. The increase is due to several factors including the increase in known commercial breeders and vehicle expenses, which are based on 2,000 miles driven per month at a vehicle rental rate of \$0.52 per mile. Table 4 provides a summary of all expected expenses.

During the initial years of regulation, it is possible that involuntary facility closure will be required. Costs associated with closure can be significant. It is important to consider the possible costs arising from a “takeover” of a facility. An AWS “takeover” of a small private animal shelter in Hendersonville cost the State over \$50,000 in staff time. This figure was for only one week of on-site care for approximately 150 animals, which is considerably smaller than recent actions against puppy mills by county officials working with the Humane Society of the United States.

In the Hendersonville case, the owners agreed to sign over the animals and allow AWS to use their facility to provide care; this is uncommon. If an owner decides to contest the takeover, the animals must be held until the appeal is concluded. A recent case in Lee County took three years before the courts declared the breeder was no longer the legal owner of the animals. The standard cost to board and feed one dog is eight dollars per day. In the Lee County case, 40 animals were held for three years, at a cost exceeding \$345,000, not including veterinary care.

AWS estimates that a takeover will occur three times per year for the first three years until breeders are convinced that action can, and will, be taken. For the purpose of this analysis, Fiscal Research has assumed that, for the first three years, AWS will takeover three 50 dog facilities per year, and that AWS must board the dogs for three months (90 days). Beginning in FY 2012-13, it was assumed that one facility per year will require takeover. This results in an expected takeover cost, exclusive of staff time, of \$108,000 per year for the first three years and \$36,000 per year after that. Based on the examples provided by AWS, this is a very conservative estimate of the possible cost of takeover. Note that these takeover assumptions differ from the fine revenue assumptions; fine will typically be assessed on facilities that are taken over but other, non-compliant facilities may be fined as well.

Table 5: Total Expected Expenses by Fiscal Year

	2009-10	2010-11	2011-2012	2012-13	2013-14
Salary	\$ 117,911	\$ 247,494	\$ 261,255	\$ 275,127	\$ 289,214
Fringe	\$ 31,089	\$ 65,256	\$ 68,884	\$ 72,542	\$ 76,256
<i>Salaries & Fringe Total</i>	<i>\$ 149,000</i>	<i>\$ 312,750</i>	<i>\$ 330,139</i>	<i>\$ 347,669</i>	<i>\$ 365,470</i>
On-going Operating Expenses					
Postage	\$ 35	\$ 44	\$ 69	\$ 92	\$ 115
Supplies	\$ 108	\$ 112	\$ 119	\$ 125	\$ 131
Motor Vehicles	\$ 18,720	\$ 38,118	\$ 38,823	\$ 39,494	\$ 40,190
Equipment	\$ 1,350	\$ 2,749	\$ 2,800	\$ 2,848	\$ 2,898
<i>On-Going Expense Total</i>	<i>\$ 20,213</i>	<i>\$ 41,022</i>	<i>\$ 41,810</i>	<i>\$ 42,560</i>	<i>\$ 43,334</i>
Start-Up Costs					
Inspection Equipment	\$ 2,000				
Computers	\$ 5,100			\$ 5,380	
Involuntary Closure Expenses	\$ 108,000	\$ 108,000	\$ 108,000	\$ 36,000	\$ 36,000
Total Expenditures	\$ 284,313	\$ 461,772	\$ 479,949	\$ 431,609	\$ 444,804

Department of Correction – Division of Prisons

Section 5

Section 5 enacts G.S. 19A-29.1 subsection (b) which makes it a Class 2 misdemeanor to operate as a commercial dog breeder in North Carolina without first obtaining a commercial breeders license. Subsection (b) provides that continued illegal operation after conviction is a separate offense.

Because the proposed Section 5 creates a new offense, the NC Sentencing and Policy Advisory Commission does not have any historical data from which to estimate the impact of this section on the prison population. *It is not known how many offenders might be convicted and sentenced under the proposed section.* In FY 2007-08, 20% of Class 2 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 misdemeanor convictions was 10 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, *convictions for this proposed offense would not be expected to have significant impact on the prison population.* The impact on local jail populations is not known.

Proposed G.S. 19A-23(5b) defines “Commercial breeder” as an individual who, during any 12 month period, maintains at least 15 adult female dogs for the primary purpose of the sale of their offspring as companion animals. A subset of the individuals who would qualify as commercial breeders under G.S. 19A-23(5b) are already subject to licensure as dealers. Subsection 7 of G.S. 19A-23 defines a “Dealer” as any person who sells, exchanges, or donates, or offers to sell, exchange, or donate animals to another dealer, pet shop, or research facility. A “Dealer” who maintains at least 15 adult female dogs primarily for selling their offspring as companion animals falls within the proposed definition of “commercial breeder.” It is currently a Class 2 misdemeanor under G.S. 19A-34 to act as a “dealer” without a license. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 19A-34. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Section 7:

Section 7 enacts G.S. 19A-29.3, making it a Class 3 misdemeanor for a commercial dog breeder to fail to adequately house, exercise, feed, water, provide adequate veterinary care, or otherwise meet the standards of care for the animals in the commercial breeder’s custody or possession.

Because the proposed Section 7 creates a new offense, the NC Sentencing and Policy Advisory Commission does not have any historical data from which to estimate the impact of this section on the prison population. *It is not known how many offenders might be convicted and sentenced under the proposed section.* In FY 2007-08, 24% of Class 3 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 misdemeanor convictions was 3 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, *convictions for this proposed offense would not be expected to have significant impact on the prison population.* The impact on local jail populations is not known.

As noted above, some portion of “commercial breeders” under the proposed law are already subject to licensure as “dealers.” Under G.S. 19A-35, it is currently a Class 3 misdemeanor for any person subject to licensure to fail to adequately house, feed, and water animals in his possession or custody. Therefore, a portion of the potential offender pool for the new offense is

already subject to prosecution for a Class 3 misdemeanor under G.S. 19A-35. AOC currently does not have a specific offense code for violations of G.S. 19A-35. The lack of AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

The new offense would also cover certain acts by “commercial breeders” which are currently covered by general animal cruelty laws. Animal cruelty offenses typically require a showing of intentional conduct. They are also classified more highly than the proposed Class 3 misdemeanor. (For example, under subsection (a) of G.S. 14-360, it is a Class 1 misdemeanor to intentionally, *inter alia*, deprive any animal of necessary sustenance.) *The proposed offense would not appear to result in any prison impact vis-à-vis the acts that are covered by these more serious offenses.*

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, Fiscal Research does not assume deterrent effects for any criminal penalty bill.

Judicial Branch

The Administrative Office of the Courts (AOC) has no data from which to determine the number of new Class 2 and Class 3 misdemeanor charges under this bill. Some individuals who would be considered “commercial breeders” under this bill already qualify as “dealers” under G.S. 19A-23. It is currently a Class 2 misdemeanor to operate as a dealer without a license (G.S. 19A-34) and a Class 3 misdemeanor for any person subject to licensure to fail to adequately care for animals in his possession or custody. *AOC does not know the number of defendants charged with these misdemeanors in the past, nor the additional number of people who would come under the new licensing requirements of this bill.*

To the extent that this legislation broadens the number of people charged with Class 2 and Class 3 misdemeanors, there will be an impact on the court system. Because commercial breeders by definition are responsible for multiple dogs, it is possible that offenders charged under this bill would face multiple charges, which could add to the complexity of the cases and increase costs. In FY 2007-08, a typical misdemeanor case took approximately 87 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

The new Class 3 misdemeanor offense would also cover some acts by commercial breeders that are already covered as higher-level misdemeanors under animal cruelty statutes. In 2008, there were 502 defendants charged with misdemeanor cruelty to animals (Class 1 misdemeanor), which includes intentionally depriving an animal of necessary sustenance, and 33 defendants were charged with abandonment of an animal (Class 2 misdemeanor). To the extent that commercial breeders are already charged at a higher offense level under existing statutes, the Class 3 misdemeanor in this bill would have no impact.

AOC provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

SOURCES OF DATA:

Administrative Office of the Courts
Department of Agriculture and Consumer Services
North Carolina Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS:

- 1) The effective date of this bill may be difficult to meet due to expected controversy surrounding the adoption of rules to regulate the commercial dog breeding industry.

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DATE: April 15, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices